

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-82

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Spencer and Sac City, Iowa,
St. James, Minnesota)

RM-8487

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: July 12, 1994;

Released: July 20, 1994

Comment Date: September 12, 1994

Reply Comment Date: September 27, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Iowa Great Lakes Broadcasting Company, Inc. ("petitioner"), requesting the substitution of Channel 285C2 for Channel 285A at Spencer, Iowa, and the modification of Station KIGL(FM)'s license to specify operation on the higher class channel. To accommodate the allotment of Channel 285C2 at Spencer, petitioner also requests the substitution of Channel 268A for Channel 285A at St. James, Minnesota, and the modification of Station KXAX's license accordingly. Petitioner also requests the deletion of unoccupied and unapplied for Channel 284A at Sac City, Iowa.

2. In support of its request, petitioner states that the allotment of Channel 285C2 to Spencer will enable Station KIGL(FM) to expand its 60 dBu coverage area from its present 1,691 square kilometers to 8,560 square kilometers, which represents a five-fold increase in coverage. As to the substitution of channels at St. James, petitioner states that Station KXAX presently operates with an effective radiated power of 3 kilowatts and a height above average terrain of 85 meters. However, if Station KXAX's license is modified to Channel 268A, petitioner states that the station can increase power to 6 kW, thus expanding the area and population which the station will serve. Finally, petitioner requests that Channel 284A be deleted from Sac City. It states that Sac City was originally allotted Channel 286A in 1985 pursuant to the Commission's action in MM Docket 84-231¹ and that this channel was later replaced with Channel 284A to accommodate other changes in the Table of

Allotments.² Since no application for Channel 284A has ever been filed, petitioner argues that there is clearly no interest in its use.

Technical Summary

3. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Spencer with an additional wide coverage area service and enable Station KIGL(FM) to expand its service area. Channel 285C2 can be allotted to Spencer in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (6.9 miles) northwest to accommodate petitioner's desired transmitter site and avoid short-spacings to Stations KLMJ, Channel 285A, Hampton, Iowa, KKLS-FM, Channel 284C1, Sioux Falls, South Dakota, KARL, Channel 286C2, Tracy, Minnesota, and KIWA-FM, Channel 287C2, Sheldon, Iowa. Channel 268A can be allotted to St. James, Minnesota, in compliance with the Commission's minimum distance separation requirements at the presently licensed transmitter site of Station KXAX.³ We shall also propose to modify the license for Station KIGL(FM) to specify operation on Channel 285C2 in lieu of its present Channel 285A. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 285C2 at Spencer or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. We also propose to delete Channel 284A from Sac City, Iowa, without replacement. Channel 284A was allotted to Sac City pursuant to the *Report and Order* in MM Docket 92-155, 8 FCC Rcd 4086. Although the filing window for applications opened on September 21, 1992, no party has submitted an application for its use. Therefore, unless a party files initial comments herein stating an intention to apply for channel 284A at Sac City, we will delete the allotment.

4. Whenever an existing licensee is ordered to switch frequencies to accommodate a new channel allotment, we require the proponent of the new allotment to make a commitment that it will reimburse the affected station for the costs incurred in changing frequencies. Petitioner has acknowledged its responsibility to reimburse Station KXAX, St. James, Minnesota, for the reasonable costs in changing frequency.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Sac City, Iowa	284A	--
Spencer, Iowa	285A, 299C1	285C2, 299C1
St. James, Minnesota	263C2, 285A	263C2, 268A

¹ See 50 FR 3514, January 25, 1994.

² See 8 FCC Rcd 4086 (1993).

³ The coordinates for Channel 285C2 at Spencer are 43-14-32

North Latitude and 95-09-19 West Longitude. The coordinates for Channel 268A at St. James are 44-03-15 North Latitude and 94-39-40 West Longitude.

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Rogers Broadcasting, Inc., licensee of Station KXAX, St. James, Minnesota, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 268A as proposed herein instead of the present Channel 285A.

7. Pursuant to Section 1.87 of the Commission's Rules, Rogers Broadcasting, Inc., may, not later than **September 12, 1994**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Rogers Broadcasting, Inc. to furnish additional information. If Rogers Broadcasting, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Rogers Broadcasting, Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensee of Station KXAX, as follows: Rogers Broadcasting, Inc., P.O. Box 465, St. James, Minnesota 56081.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **September 12, 1994**, and reply comments on or before **September 27, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Leonard S. Joyce, Esq.
5335 Wisconsin Avenue
Suite 300
Washington, D.C. 20015
(Counsel to petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and com-

ment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures*. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as

they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.